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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

HARRISON-HALSTED COMMUNITY GROUP, INC., et al.,
Petitioners,

vs.

HOUSING AND HOME FINANCE AGENCY, et al.,
Respondents.

OPPOSITION BRIEF OF RESPONDENTS, THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS, CITY OF CHICAGO, CHICAGO LAND CLEARANCE COMMISSION, CHICAGO COMMUNITY CONSERVATION BOARD, CHICAGO PLAN COMMISSION, AND ILLINOIS STATE HOUSING BOARD.

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To The Honorable, The Chief Justice of the United States, and The Associate Justices of the Supreme Court of the United States:

Respondents pray that the writ of certiorari be denied.

QUESTIONS PRESENTED

Petitioners list fourteen questions as presented by their petition. However, many of them are not argued and may be considered waived. The fact is there are but three basic questions:

1. Do Illinois slum clearance and eminent domain procedures, *i.e.*, those in the related state court actions (Appendix M to Supplement to Petition), deny residents and property owners the due process and just compensation guaranteed them by the 14th Amendment to the United States Constitution?

2. Do the petitioners have standing to complain of alleged violations of the Federal Housing Act in the granting by the Federal Housing and Home Finance Administrator of a subsidy for the local slum clearance project in the area?

3. Do the allegations of petitioners' amended complaint raise a substantial Federal question?

The Court of Appeals was clearly correct in answering these questions in the negative and in affirming the dismissal of the action.

STATEMENT OF THE CASE

Respondents accept petitioners' statement of the facts, solely for purposes of the Court's consideration of the petition, but not petitioners' characterizations and interpretations of the opinions of the Court of Appeals and the Supreme Court of Illinois in these cases. These opinions are discussed at pages 7-11, *infra*.

The Illinois Supreme Court's opinion in the state condemnation cases (Appendix M to Supplement to Petition) demonstrates that the owners of land in the area in question are receiving just compensation for their properties, that they are being afforded a full and fair judicial hearing on the "slum and blighted" designation, and that their rights are being fully protected in the state courts.

On this record, the petition is no more than a request that this Court decide hypothetical and abstract questions which might be presented in some other litigation if, at some future time, rights of residents in some slum clearance area are infringed.

The true thrust of this litigation, as appears from the petition, (p. 7) is that petitioners seek to compel redevelopment of the slum and blighted area in question for residential and commercial rather than University purposes.

REASONS FOR DENYING THE WRIT

Petitioners self servingly declare that the law in the field of urban renewal is in a state of conflict and confusion. Their petition belies their boast but in any event, the important fact here is that it appears from the petition and the supplement thereto that in Illinois eminent domain proceedings property owners are being awarded just compensation for their property*, and that the issue of whether their property is in a slum and blighted area is being fully tried in those proceedings. Accordingly, the petition presents only abstract questions. Petitioners invite this Court to intervene in order to provide what they like to assert is a need for greater symmetry and synthesis in the law.

Actually, there is symmetry in the law in this field. The decisions reflect a remarkable consistency and faithful adherence to the principles set forth in this Court's prior decisions. The decisions of the Court of Appeals and the Supreme Court of Illinois follow these well-established lines of authority and carefully and fully protect all of petitioners' rights.

In *Berman* v. *Parker,* 348 U.S. 26 (1953), this Court unanimously sustained the validity of District of Columbia slum clearance legislation in an opinion which has become the basic authority in the urban renewal field. The Court recognized the social dangers created by slum and blight, and sustained the slum clearance program there

* The opinion of the Illinois Supreme Court (Appendix M to Supplement to Petition, page 94a) states:

> "Thereafter the issues of just compensation were tried, judgments were entered upon the verdicts and the city deposited the amounts of the judgments with the county treasurer. No question is raised in this appeal as to the sufficiency of the awards."

involved as a valid exercise of the police power. The Court specifically held that acquisition and clearance of slum land was in itself a valid public purpose and that the nature of the redevelopment of the cleared land was essentially a legislative determination. Consequently, the fact that some of the cleared land was to be sold to private persons who in turn would carry out the redevelopment plan did not invalidate the clearance project. The Court also emphasized the limited character of permissible judicial review of slum clearance activity, stating:

> "We do not sit to determine whether a particular housing project is or is not desirable . . . If those who govern the District of Columbia decide that the nation's Capitol should be beautiful as well as sanitary there is nothing in the Fifth Amendment that stands in the way." (348 U.S., p. 33)
>
> "In such cases, the legislature, not the judiciary, is the main guardian of the public's interest to be served by social legislation, whether it be the Congress legislating concerning the District of Columbia . . . or the states legislating concerning local affairs. This principle admits of no exception merely because the power of eminent domain is involved. The role of the judiciary in determining whether that power is being exercised for a public purpose is an extremely narrow one." (348 U.S. at p. 32)

Guided by this far-sighted decision, all but a few states have adopted slum clearance legislation. Owners of property in slum clearance areas, whose private interests are at adds with the public purposes of slum clearance, have instituted a large number of suits in many jurisdictions, attacking slum clearance upon every conceivable ground. In virtually all of these actions, the property owners have advanced one or more of the following arguments:

(1) The proposed redevelopment of the slum area after clearance is somehow illegal and this al-

leged illegality has invalidated the slum clearance itself.

(2) The procedures followed by the slum clearance authorities deprived property owners and residents of due process.

(3) The local slum clearance activities are being financed in part by a Federal subsidy and the local authorities have not complied with provisions of the subsidy statute.

Petitioners' arguments fall into one or more of these categories.

The arguments now advanced by petitioners have been advanced by others and have been rejected in virtually all of the more than eighty urban renewal decisions found by respondents (most of which are listed in the annotation which appears at 44 ALR2d 1414 and in the ALR Supplemental Service), on the basis of the principles enunciated in *Berman* v. *Parker, supra*, and the well-established principles of standing to sue enunciated by this Court in *Frothingham* v. *Mellon*, 262 U.S. 447 (1923), and *Tennessee Electric Power Company* v. *T.V.A.*, 306 U.S. 118 (1939), among others. Of this large number of urban renewal decisions, two were appealed to this Court by the property owners. Both appeals were dismissed for want of a substantial Federal question. *Grisanti* v. *City of Cleveland*, 371 U.S. 68 (1962); *Cannata* v. *City of New York*, 371 U.S. 4 (1962).*

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* Petitioners criticize the decision of the New York Court of Appeals in *Cannata* v. *City of New York* (182 N.E. 2d 395 (N.Y. 1962)), arguing that the Court had "not sufficiently analyzed the unique features of urban renewal." (Petition, p. 25) However, petitioners fail to note or comment upon the fact that this Court dismissed the appeal to this Court from the judgment of the New York Court of Appeals for want of a substantial Federal question.

As a result of more than a decade of litigation, the basic principles in the field of slum clearance and urban renewal are well-established. Petitioners seek only to relitigate these settled matters. Consequently, the petition does not state a sufficient basis for the granting of the Court's writ of Certiorari.

The Undisputed Facts Demonstrate That Petitioners' Due Process Rights Have Been Fully Afforded Them.

Petitioners assert broadly that they have not had a fair hearing and that they have been denied due process. These contentions are refuted by the opinion of the Supreme Court of Illinois in the state condemnation cases (Appendix M to Supplement to Petition) and by the undisputed facts.

At the outset it is necessary to correct petitioners' misconstruction of the opinions of the District Court and the Court of Appeals. Petitioners incorrectly state that the Court of Appeals affirmed the dismissal of their suit on the theory that the allegations of their complaint were legally sufficient but should be heard in state court proceedings. Petitioners then argue that the decision of the Supreme Court of Illinois shows that Illinois courts will not consider these issues and consequently undercuts the decision of the Court of Appeals. This argument misinterprets the decisions.

In order to clarify the situation it is necessary to review the facts which existed when the decisions were rendered by the District Court and by the Court of Appeals, respectively. When this matter was before the District Court the state condemnation actions had been filed but had not been tried. When the appeal was heard by the Court of Appeals the trial of the state court condemnation actions had been completed but the

record in those proceedings was not before or known to the Court of Appeals.

Consequently, the allegations of petitioners' amended complaint in the District court must be divided into two groups. First, there are allegations concerning alleged facts which must have occurred, if at all, by the time the amended complaint was filed in the District Court. Allegations in this group include those concerning supposed violations of the Federal Housing Act; those concerning petitioners' claimed rights in the nature of the redevelopment of the slum area; those concerning the alleged improper motives of the local governmental officials who planned the slum clearance project; and those concerning alleged violation of due process by reason of a failure to hold a trial-type rather than a legislative-type hearing on the slum and blighted designation at the time the slum clearance project was first decided upon.

As to these matters, respondents argued and the District Court and the Court of Appeals held that the allegations even if true, were insufficient as a matter of law to entitle petitioners to any relief whatever, and that a judicial-type hearing was not required at that stage. The Supreme Court of Illinois agreed with both Federal courts on these issues and the decisions of these courts were clearly correct. Obviously, it is unnecessary to hold factual hearings on the truth or falsity of legally insufficient allegations.

Second, petitioners also alleged in their complaint that the area in question was not "slum and blighted" and that consequently the taking of their property would not be for a public use. They also alleged that the designation of the area as "slum and blighted" necessarily depreciated property values and would, under Illinois eminent domain rules, necessarily prevent residents from obtaining the

just compensation guaranteed them by the Fourteenth Amendment.

As to these allegations, the District court and the Court of Appeals properly held that petitioners would receive a full judicial hearing on the matters of public use and compensation in the state court condemnation proceedings; that petitioners would not be denied constitutional rights as to these matters unless the state courts, in the condemnation actions failed or refused to grant them these rights; that Federal courts will not speculate or presume that state courts will fail to do their duty, but rather, that Federal courts will presume that the state courts will afford to the petitioners all of their constitutional rights. This holding was clearly correct as a matter of law. *Amalgamated Clothing Workers* v. *Richmond Bros. Co.*, 348 U.S. 511, 518 (1955); *Georgia* v. *Chattanooga*, 264 U.S. 472, 483 (1924); *Carver Progressive Club* v. *Miriana*, 192 F. Supp. 825 (E.D. Mich. 1960) aff'd. per curiam 288 F. 2d 889 (6th Cir. 1961); *Baber* v. *Texas Utilities Company*, 228 F. 2d 665 (5th Cir. 1956).

The opinion of the Supreme Court of Illinois is significant here because it demonstrates that this second group of allegations was not only speculative but untrue. The opinion shows that a group of the petitioners, represented by the same counsel who represent petitioners here, received a full judicial hearing on both the question of public use, *i.e.*, the "slum and blighted" character of the area, and the question of just compensation for land to be taken. The Illinois Supreme Court held that the lower court's finding that the area in question was "slum and blighted" was supported by a preponderance of the evidence. And it is conceded by petitioners that just compensation was awarded for the land taken. This disposes of petitioners' speculative allegations that their property would be taken

for other than a public use, that they would not have a full hearing on the question of "public use", and that they would not be awarded just compensation for their land.

A large portion of the area has been acquired. No appeals are pending concerning the adequacy of compensation. These facts dispose of petitioners' speculative allegations that the economic consequences of the "slum and blighted" designation are so disastrous and the rules of compensation applied by Illinois Courts so unfair that the owners of property in a "slum and blighted" area in Illinois could never receive the fair cash market value of their property when taken. On this record, petitioners' allegations concerning the possibility of inadequate compensation in Illinois eminent domain cases are necessarily abstract and speculative.

The foregoing also underscores the correctness of the holdings by the lower courts, state and federal, that petitioners' due process rights were not violated by the postponement to the condemnation proceedings stage of a judicial hearing on the "slum and blighted" designation. This holding was clearly correct as a matter of law since the initial decision to undertake slum clearance in a particular area is a legislative determination as to which no hearing is required. *Bragg* v. *Weaver*, 251 U.S. 57 (1919); *Rindge Co.* v. *County of Los Angeles*, 262 U.S. 700, 709 (1923); *Combs* v. *Illinois State Toll Highway Commission*, 128 F. Supp. 305 (N.D. Ill. 1955), Aff'd *per curiam* 349 U.S. 942; *Robinette* v. *Chicago Land Clearance Commission*, 115 F. Supp. 669, 672 (N.D. Ill. 1951), leave to file petition for mandamus denied 342 U.S. 940 (1952); *Zurn* v. *City of Chicago*, 389 Ill. 114, 59 N.E. 2d 18 (1945); *Ross* v. *Chicago Land Clearance Commission*, 413 Ill. 377, 108 N.E. 2d 776 (1952); *Shapiro* v. *Chicago Land Clearance Commission*, 19 Ill. App. 2d 461, 154 N.E. 2d 329 (1st Dist.

1958). In addition, the opinion of the Illinois Supreme Court demonstrates that the Illinois procedure protects petitioners' rights and results in substantial justice.

Petitioners also complain because they were not permitted to go into the motives of the local governmental officials who directed the slum clearance. Petitioners argue that these local officials were motivated by a desire to acquire land for a branch of the University of Illinois, rather than by a desire to clear slums, and that these motives are improper or unauthorized.[1] But the condemnation proceedings have established that the neighborhood is in fact slum and blighted, and that therefore its clearance will accomplish the public purpose of slum clearance legislation. Consequently, the nature of the proposed redevelopment cannot invalidate the slum clearance.

Petitioners' argument is essentially a restatement of the contentions rejected by this Court in *Berman* v. *Parker*, *supra*. They are the same contentions that have been made in virtually all attacks on slum clearance legislation and projects. They have been rejected as often as they have been made.

Petitioners' arguments about redevelopment and alleged insufficiency of hearings prior to condemnation are iden-

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[1] Petitioners concede (Petition, p. 7) that their real quarrel with respondents is not over the exercise of slum clearance powers in this area. They would prefer residential and commercial redevelopment to the use of the cleared land as a branch of the University of Illinois. Petitioners' prayer for relief seeks to require respondents to redevelop the area for residential and commercial use, though many of petitioners' objections are equally applicable to that redevelopment. The inconsistency of this position is obvious.

tical to those made by property owners and rejected in *Grisanti* v. *City of Cleveland*, 179 N.E. 2d 798 (Ohio Com. Pleas, 1961) aff'd. 181 N.E. 2d 299 (Ohio App. 1961) appeal dismissed 182 N.E. 2d 568 (Ohio 1962), in which the appeal of the objecting property owners to this Court was dismissed for want of a substantial Federal question. 371 U.S. 68 (1962). In fact, it would appear that the Ohio procedure afforded fewer protections to the property owners than does the Illinois procedural because, from all that appears in the two Ohio opinions, Ohio procedure does not afford property owners a judicial hearing on the question of "slum and blight" in the condemnation proceedings.

Petitioners Have No Standing To Seek Review of Compliance With Provisions of the Federal Housing Act.

After a full judicial hearing, the area in question has been adjudicated to be a slum and blighted area. Property owners in the area are receiving just compensation for their property in condemnation proceedings. These facts dispose of all possible objections to the slum clearance project. Nevertheless, petitioners argue that the condemning body is financing the project in part by a Federal subsidy; that certain provisions of the Federal subsidy act allegedly have not been complied with; and that this somehow invalidates the slum clearance. The answer is that petitioners have no standing to raise these objections, and that in any event the objections are without merit.

Petitioners now concede that this Court's decisions establish the requirement that, in order to afford them standing to complain in a Federal court of agency action or seek judicial review of that action under the Administrative Procedure Act, petitioners must

show that the particular agency action compalined of has violated their private legal rights as distinguished from their rights as members of the general public. *Frothingham* v. *Mellon*, 262 U.S. 447, 488 (1923); *Alabama Power Co.* v. *Ickes*, 302 U.S. 464 (1938); *Tennessee Electric Power Co.* v. *T.V.A.*, 306 U.S. 118, 137 (1939); *Perkins* v. *Lukens Steel Company*, 310 U.S. 113, 125 (1940); *Kansas City Power & Light Co.* v. *McKay*, 225 F.2d 924, 931 (D.C. Cir. 1955), cert. den. 350 U.S. 884 (1955); *Gart* v. *Cole*, 263 F.2d 244, 250 (2d Cir., 1959), cert. denied, 359 U.S. 978 (1959).

Many of the petitioners have no property or other private legal interest (as distinguished from rights and interests as members of the general public) which will be affected by the slum clearance program. Those who are owners of property have an opportunity in the condemnation proceeding to challenge the determination of "slum and blight" and to receive just compensation for their properties. Alleged irregularities in the obtaining of some of the funds used by the condemning body to discharge condemnation judgments and to clear the slum area neither affect nor infringe any of the petitioners' legal rights. In *Allied-City Wide Inc.* v. *Cole*, 230 F.2d 827, 828 (D.C. Cir., 1956), the Court of Appeals stated, in rejecting arguments under the Federal Housing Act which are identical to those made by petitioners:

> "Appellants will be evicted, if at all, by condemnation proceedings lawfully maintained by New York City. One who will be injured by another's lawful use of money has no standing to assert that a third person's action in providing the money will be illegal."

The Illinois Supreme Court properly held, in accordance with well-established principles, that the source of the funds employed by a public body to pay condemnation awards is of no concern to the condemnees. Appendix M to Supplement to Petition, p. 97a; *City of Chi-*

cago v. *Sanitary District*, 272 Ill. 37, 41-42, 111 N.E. 491, 493 (1916); *Summerfield* v. *City of Chicago*, 197 Ill. 270, 283, 64 N.E. 490, 494 (1902); *C. B. & Q. R. R. Co.* v. *Naperville*, 169 Ill. 25, 48 N.E. 335 (1897).

Petitioners attempt to avoid the effect of these decisions by arguing that the Federal subsidy statute was enacted for their personal protection; that the statute created private legal rights in them as residents and owners of property in slum clearance areas to require compliance with all provisions of the subsidy statute; and that the statute made them third party beneficiaries of subsidy contracts executed by the Federal and local agencies. There is no indication of any of this in the language of the Federal statute or its legislative history. On the contrary, it is clear that the provisions in the statute for the guidance of the Federal administrator in determining whether in the exercise of his discretion to grant a subsidy, were intended to prevent waste of public funds and protect the public generally. The public generally, including local residents as part of that group, are benefited by the clearance of slums.

Attempts by businessmen, residents, property owners or others to complain as private litigants of alleged noncompliance with the Federal Housing Act have been rejected repeatedly by the courts on the ground of lack of standing to sue. *Allied-City Wide, Inc.* v. *Cole*, 230 F.2d 827, 828 (D.C. Cir. 1956); *Pittsburgh Hotels Assn., Inc.* v. *Urban Redevelopment Authority of Pittsburgh*, 202 F.Supp. 486, 492-493 (W.D. Pa. 1962), affirmed 309 F.2d 186 (3rd Cir. 1963), cert. denied; sub. nom. *Hilton Hotels Corporation* v. *Urban Redevelopment Authority*, 31 Law Week 3261, Feb. 19, 1963; *Taft Hotels* v. *Housing & Home Finance Agency*, 162 F. Supp. 538 (D. Conn. 1958), affirmed 262 F.2d 307 (2nd Cir. 1958), cert. denied 359 U.S. 967 (1959); *Hunter* v. *City of New York*, 121 N.Y.S. 2d 841, 846 (Sup. Ct. 1953); *Kaskel* v.

Impellicieri, 121 N.Y.S. 2d 848 (Sup. Ct. 1953). The same result has been reached in similar cases involving other federal statutes. *Clement Martin* v. *Dick Corporation*, 97 F.Supp. 961, 964 (W.D. Pa. 1951); *Hoffman* v. *Stevens*, 177 F.Supp. 898, 903 (N.D. Pa. 1959); *Sapp* v. *Hardy*, 204 F.Supp. 602 (D. Del. 1962); *Choy* v. *Farragut Gardens*, 131 F.Supp. 609 (S.D. N.Y. 1955).

No Conflict of Decision Between the Circuits Is Presented.

Petitioners desperately argue that a conflict between the circuits exists on this question. They cite three cases, none of which supports their contention. In *Barnes* v. *City of Gadsden*, 268 F.2d 593 (5th Cir. 1959), cert. denied, 361 U.S. 915 (1960) the question of standing was not discussed and apparently was never argued or raised. In any event the decision was adverse to the residents. In *Bachman* v. *Erieview Corporation*, 311 F.2d 85 (6th Cir., 1962) (petition for certiorari pending Dkt. No. 772), the court upheld the right of a citizen and taxpayer to challenge the legality of the Federal subsidy contract. However, standing in that case was based upon a provision of the Cleveland city charter which specifically authorized a taxpayer to institute proceedings to restrain the misapplication of funds of the city, regardless of source, abuse of its corporate powers, or execution or performance of any contract made in behalf of the city in contravention of law. The court treated this statute as an authorization to the taxpayer to sue on behalf of or in the place of the municipality on any cause of action which the municipality might have. In other words the suit was derivative, not private. The absence of a like special standing provision in Illinois makes this decision inapplicable here. In any event, the court held that the taxpayer's claim of an alleged violation of the Federal Housing Act was unfounded, and dismissal of his complaint was upheld.

In *Gart* v. *Cole*, 166 F.Supp. 129 (S.D. N.Y. 1958) affirmed 263 F.2d 244 (2nd Cir. 1959) cert. denied, 359 U.S. 978 (1959), the Court of Appeals affirmed dismissal of a complaint by real property owners and residential and business tenants in a slum clearance area, despite their claim that the slum clearance was undertaken in contravention of the provisions of the Federal Housing Act. The court stated and reaffirmed the general principles of standing to sue cited above. While the Court made some statements, which may be considered dicta, to the effect that the plaintiffs had standing to challenge the administrator's refusal to grant them an oral hearing or the administrator's alleged delegation of his duty to consider the feasibility of relocation plans of the local agency, these statements are of no moment because petitioners here do not assert violations on either of those grounds. Consequently, there could be no conflict between *Gart* v. *Cole*, *supra* and the Court of Appeals decision here. The Court of Appeals in *Gart* v. *Cole*, *supra* stated that, if the administrator had delegated his duty regarding the relocation plans this would have amounted to "misconduct" on his part. That interpretation may have been the reason for suggesting that judicial review might be available. No "misconduct" by the Administrator is alleged here. In any event, the Court of Appeals in *Gart* v. *Cole*, *supra* held that the plaintiffs had no right to a hearing before the Administrator and that they had presented no evidence tending to show improper delegation of duty on his part. This holding is an adequate support for the decision. This decision, like all of the others, dismisses the contentions of the residents and property owners. There is no conflict between the circuits within the meaning of the Court's Rule 19.

In any event, the undisputed facts demonstrate that no violations of the Federal Housing Act have occurred. Petitioners concede that the Planning and Housing Committee of the Chicago City Council held a hearing in April, 1961, at which all interested persons could appear and express their views on the proposed slum clearance projects. This satisfied the Federal Housing Act provision concerning a hearing (App. 5A). After petitioners had filed a voluminous brief with the Federal Administrator of the HHFA, the Administrator certified that the Chicago Land Clearance Commission had complied with the "general plan" and "relocation plan" provisions of the Federal Housing Act. The record in this case contains or describes lengthy public documents designated by respondents as the general plan for the City of Chicago and as the plans for the relocation of residents displaced by slum clearance (Rec. 197, 198, 261, 306, 772-832). Petitioners do not contend that these documents were fraudulently prepared or that they were fraudulently submitted to the Administrator. As far as any possible judicial review is concerned, the Federal Housing Act has been satisfied.

CONCLUSION.

Petitioners' contentions are merely restatements of arguments made and uniformly rejected in prior cases. The petition states no basis for the granting of the writ of certiorari.

Respectfully submitted,

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